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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ANDREA BARTZ and KIRK
WALLACE JOHNSON, individually, and
ANDREA BARTZ, INC., CHARLES
GRAEBER, and MJ + KJ, INC.,
individually and as representatives of the
class,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case No. 4:24-cv-05417-AMO

**APPLICATION OF CLASS
MEMBER DONALD S. PASSMAN
FOR LEAVE TO SUBMIT LATE
REQUEST FOR EXCLUSION
FROM CLASS ACTION
SETTLEMENT; AND IN THE
ALTERNATIVE, CONDITIONAL
OBJECTION TO FINAL
APPROVAL**

FREUNDLICH LAW, APC
ENCINO, CALIFORNIA

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Donald S. Passman, a member of the certified class,
3 hereby applies to the Court for leave to submit a late request for exclusion from the class
4 action settlement. No final approval order has been entered. The Court retains full
5 equitable authority to act before it does. The applicable standard changes the moment the
6 proposed order is signed, from good cause or excusable neglect under *Silber v. Mabon*,
7 18 F.3d 1449 (9th Cir. 1994), to the substantially more demanding standard of Rule
8 60(b). Passman respectfully requests that the Court consider this application before
9 entering the proposed order.

10 This application is based upon this Notice, the Memorandum of Points and
11 Authorities set forth herein, the Declaration of Donald S. Passman filed concurrently
12 herewith (“Passman Decl.”), the Declaration of Kenneth D. Freundlich filed concurrently
13 herewith (“Freundlich Decl.”), all exhibits thereto, the pleadings and records on file in
14 this action, and such other matters as may be presented to the Court.

15 **WHY THIS APPLICATION SHOULD BE CONSIDERED BEFORE ENTRY OF**
16 **THE PROPOSED ORDER**

17 The proposed final approval order could be entered at any time without prior
18 notice. No final approval order has been entered. The last docket entry in this action is
19 Docket No. 674, filed June 25, 2026, a notice of attorney withdrawal. Until the proposed
20 order is signed, this Court retains full equitable and case management authority over the
21 proceeding. The timing is decisive. Before entry of the final order, this application is
22 evaluated under good cause or excusable neglect, the *Silber* standard this application
23 satisfies. After entry, Mr. Passman must meet Rule 60(b)’s substantially more demanding
24 requirements. The window to proceed under the correct standard is open now.

25 The distinction is not procedural formality. Good cause or excusable neglect
26 under *Silber* ask whether the class member’s delay was reasonable under the
27 circumstances. Rule 60(b) requires mistake, newly discovered evidence, fraud, or
28

1 extraordinary circumstances. These are different inquiries with materially different odds.
2 This application asks the Court to apply the right one.

3 Class Counsel is aware of this application. At the May 14, 2026 final approval
4 hearing, Class Counsel initially objected to the late opt-out requests then before the
5 Court, and then withdrew those objections in open court. Having taken that position
6 before this Court, Class Counsel has nonetheless informed Passman that it intends to
7 oppose this application. That position is difficult to reconcile with the hearing record.
8 Passman's showing of excusable neglect is at least as strong as, and in key respects
9 stronger than, the late opt-outs Class Counsel declined to contest. Unlike those movants,
10 Passman is the sole author and sole copyright owner of his works, with no co-owner
11 complications. The Court has already permitted late opt-out requests from other class
12 members who demonstrated good cause. Passman applies on the same basis.

13 Granting this application causes no prejudice to any party. The fund is non-
14 reversionary and fixed at \$1.5 billion. Excluding Passman's four works does not reduce
15 it, affect any other class member's recovery, or alter Class Counsel's fee award. The only
16 consequence is that Passman may pursue his individual copyright claims, the precise
17 remedy the proposed order itself identifies as appropriate for class members who believe
18 the per-work payment is insufficient. Dkt. 672-1 at 25.

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I. INTRODUCTION

21 Donald S. Passman is a preeminent entertainment attorney, a partner at Gang,
22 Tyre, Ramer, Brown & Passman, Inc. in Beverly Hills, California, and the author of *All*
23 *You Need to Know About the Music Business* (Simon & Schuster), the definitive
24 reference work on the music industry. (Passman Decl. ¶ 1.) The book has been
25 continuously updated across multiple editions and has been in print for over three
26 decades. (*Id.*) Four registered editions, bearing Copyright Office registration numbers
27 TX0003315448, TX0006468255, TX0008224272, and TX0009144313, appear on the
28 settlement's Works List. (*Id.* at ¶ 2.)

1 Passman never received the Court-approved class notice. (Passman Decl. ¶ 4.)
2 Whatever notice the settlement administrator may have mailed, no original class notice
3 ever reached Passman before the February 9, 2026 opt-out deadline, or at any time
4 thereafter. (*Id.* at ¶ 5.) The first written communication he received from anyone
5 connected to this settlement was a letter dated April 29, 2026, received on May 13, 2026,
6 ninety-three days after the February 9, 2026 opt-out deadline had closed. (*Id.* at ¶¶ 11-
7 12.) That letter was not the original class notice. (*Id.* at ¶¶ 11-12.) It was a post-deadline
8 claims notice stating that a claim had been filed for his books and inviting him to submit
9 his own claim for payment. (*Id.* at ¶ 13.) It said nothing about his right to opt out and
10 made no mention of the opt-out deadline that had already passed. (*Id.* at ¶ 13, Ex. B.)
11 Passman did not miss the deadline because he was inattentive or chose not to act. (*Id.* at ¶
12 6.) He missed it because he never received the notice that would have told him the
13 deadline existed. (*Id.*) The causal link between the notice failure and the missed deadline
14 is direct and undisputed. That is the paradigm case for excusable neglect.

15 This motion is brought on the same legal grounds that Class Counsel’s own
16 Second Supplemental Proposed Order accepts as sufficient to grant the late opt-out
17 requests of Laura Esquivel (Dkt. 635) and Jordi Castells (Dkt. 636). The Second
18 Supplemental Proposed Order, filed by Class Counsel on May 21, 2026 (Dkt. 672-1),
19 grants those requests because the objectors “demonstrated good cause for their late opt-
20 out requests.” Dkt. 672-1 at 48. The grounds for that grant apply with equal or greater
21 force to Passman: like Esquivel and Castells, he never received the original class notice
22 through no fault of his own; unlike the co-ownership complications that initially arose in
23 their cases, Passman is the sole author and sole copyright owner of his works, with no co-
24 owner issue of any kind. (Passman Decl. ¶ 2.)

25 The Second Supplemental Proposed Order also notes that there are seven other
26 individuals whose opt-out requests are late but would otherwise be valid, and explains
27 that those seven are denied relief for one reason only: “none of these seven class
28

1 members have applied to the Court to request relief from the opt-out deadline.” Dkt. 672-
2 1 at 49–50. Passman is applying. He is doing exactly what those seven did not do.

3 The case for granting this motion is reinforced by Class Counsel’s own
4 representations at the May 14, 2026 final approval hearing. When this Court inquired
5 about late opt-outs, Class Counsel’s lead attorney Justin Nelson stated directly to the
6 Court: “We will stand down on the objection if it’s easier and so we will withdraw those
7 objections with respect to any of the late opt-outs that have come in, Your Honor.” Hr’g
8 Tr. at 27:5–9 (May 14, 2026). That representation was made in open court and is part of
9 the record. Passman’s motion is brought pursuant to that statement. Any opposition to
10 this motion would be difficult to reconcile with the position Class Counsel’s own lead
11 attorney took before this Court.

12 The letter Passman received also erroneously attributed to him a book entitled *The*
13 *Algebraic Structure of Group Rings* (Reg. No. RE0000923970), a mathematics text
14 written by a University of Wisconsin mathematician who shares Passman’s name. The
15 administrator’s failure to distinguish two individuals with the same name further
16 evidences that the notice program’s class-identification processes were unreliable as
17 applied to Passman.

18 No final approval order has been entered. The Court retains full equitable
19 discretion to grant this motion. The equitable factors each favor relief: no original notice,
20 good cause, no prejudice, and substantial individual claims. The Class Counsel’s own
21 proposed order confirms that the appropriate response for an author who believes the per-
22 work settlement amount is insufficient is to opt out and file suit: the proposed order states
23 that an objector who contends “the amount should be higher” “had the right to opt-out its
24 works and file suit.” Dkt. 672-1 at 24:17-19. That is precisely the relief Passman seeks.

25 II. PROCEDURAL BACKGROUND

26 On August 19, 2024, Plaintiffs filed this copyright infringement class action
27 against Anthropic PBC.
28

1 On September 25, 2025, the Court (then before Judge Alsup) granted preliminary
2 approval of the class settlement. (Dkt. 427.) The Court issued its written Memorandum
3 Opinion on Preliminary Approval on October 17, 2025. (Dkt. 437.)

4 The original notice program was supplemented multiple times: a Further Order on
5 class notice was entered November 18, 2025 (Dkt. 490), and a joint motion for
6 supplemental class notice was granted December 30, 2025 (Dkt. 531). The need for
7 repeated corrective and supplemental notice reflects that the original notice program
8 failed to reach all class members.

9 On December 31, 2025, the case was reassigned to Judge Martínez-Olguín. (Dkt.
10 532.) On January 8, 2026, Judge Martínez-Olguín extended the opt-out deadline (Dkt.
11 535), and on January 27, 2026, she extended it again by eleven days. (Dkt. 583.) The
12 final opt-out deadline was February 9, 2026.

13 On March 19, 2026, Class Counsel filed its Motion for Final Approval. (Dkt.
14 619.) The Court set the final approval hearing for May 14, 2026. (Dkt. 632.)

15 On April 9, 2026, Laura Esquivel (Dkt. 635) and Jordi Castells (Dkt. 636) filed
16 papers requesting court approval of their late opt-out requests. Both movants represented
17 that they never received the original class notice. Class Counsel's initial proposed order
18 denied both without prejudice on co-owner consent grounds. (Dkt. 646-1 at 11:26–12:2.)

19 The final approval hearing was held on May 14, 2026. At the hearing, Class
20 Counsel withdrew its opposition to Esquivel's and Castells's late opt-out requests after
21 the co-owner consent issue was resolved.

22 Following the hearing, the Court issued a post-hearing order directing
23 supplemental briefing by May 21, 2026 on whether unexcused late opt-outs should be
24 honored. (Dkt. 664.) Anthropic filed a supplemental brief opposing all late opt-outs (Dkt.
25 671). Class Counsel filed the Second Supplemental Proposed Order (Dkt. 672-1), which
26 grants Esquivel's and Castells's late opt-out requests on the ground that they
27 "demonstrated good cause." Dkt. 672-1 at 48:21-28.

28 As of the date of this filing, no final approval order has been entered.

III. ARGUMENT

A. The Applicable Standard Is Excusable Neglect Or Good Cause.

A class member seeking to opt out after the applicable deadline must show that “excusable neglect or good cause excuses the delay.” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 6276092, at *1 (N.D. Cal. Apr. 20, 2017) (quoting *Silber v. Mabon*, 18 F.3d 1449, 1455 (9th Cir. 1994)). The Ninth Circuit’s *Silber* factors guide this inquiry: (1) the degree of compliance with best practicable notice procedures; (2) when notice was actually received, and if not timely, why not; (3) what caused the delay and whose responsibility it was; (4) how quickly the belated opt-out was made once notice was received; (5) how many class members seek relief; and (6) whether granting relief would affect the settlement or finality of judgment. *See Silber*, 18 F.3d at 1455. The related *Pioneer* factors, prejudice to the opposing party, length of delay, reason for delay, and good faith, inform the same analysis. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993).

Because no final approval order has been entered, the Court need not apply the more demanding standard of Rule 60(b). Before entry of a final judgment approving a class settlement, the Court retains broad equitable and case management authority to modify the proceedings, including by permitting a late opt-out request. The Court’s inherent case-management authority, codified in part through Rule 23(d), authorizes the Court to issue orders protecting class members and ensuring the fair conduct of the action. The applicable standard comes from *Silber v. Mabon*, 18 F.3d 1449, 1455 (9th Cir. 1994); *see also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2017 WL 6276092, at *1 (N.D. Cal. Apr. 20, 2017). Rule 23(e)(4) further reflects Congress’s recognition that courts retain authority, before approving a settlement of a previously certified Rule 23(b)(3) class, to afford class members a renewed opportunity to request exclusion where circumstances warrant. Fed. R. Civ. P. 23(e)(4); Fed. R. Civ. P. 23(d)(1). This discretion is at its broadest here: the case remains open, the

1 proposed order sits unsigned, and granting this motion requires only a finding of good
2 cause or excusable neglect.

3 Class Counsel’s Second Supplemental Proposed Order confirms the applicable
4 standard and its application: Esquivel and Castells are granted relief because they
5 “demonstrated good cause for their late opt-out requests.” Dkt. 672-1 at 48. Passman
6 applies the identical standard - good cause, and independently, excusable neglect - and
7 presents facts at least as compelling.

8 **B. Passman Never Received Actual Notice Of The Settlement Or Opt-**
9 **Out Deadline.**

10 Rule 23(c)(2)(B) requires that identifiable class members receive “the best notice
11 that is practicable under the circumstances, including individual notice to all members
12 who can be identified through reasonable effort.” The Rule further requires that the notice
13 state “that the court will exclude from the class any member who requests exclusion” and
14 “the time and manner for requesting exclusion.” Fed. R. Civ. P. 23(c)(2)(B)(v)–(vi). The
15 notice defect therefore goes directly to the exclusion right Passman lost. The Supreme
16 Court has long recognized that the constitutional minimum for binding absent class
17 members requires notice reasonably calculated to apprise them of the proceedings and
18 afford them an opportunity to opt out. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339
19 U.S. 306, 314 (1950); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–76
20 (1974). Whatever the adequacy of the notice program as applied to the class generally,
21 the question here is individual: did Passman receive actual notice in time to act? He did
22 not. (Passman Decl. ¶ 5.) The original class notice never reached him before the February
23 9, 2026 opt-out deadline, or at any time thereafter. (*Id.*) The first communication he
24 received from anyone connected to this settlement arrived ninety-three days after that
25 deadline had passed and said nothing about any right to opt out. (*Id.* at ¶¶ 4–5.) That
26 failure, a failure of the notice program, not of Passman, is independently sufficient to
27 establish good cause or excusable neglect under *Silber* as to Passman specifically, for the
28 reasons set forth in Section III.C below.

1 **1. Passman Never Received the Original Class Notice.**

2 Passman received no communication, by email, postal mail, postcard, or any other
3 means, from the settlement administrator, Class Counsel, Defendant Anthropic, or any
4 other party regarding this case, the settlement, the opt-out deadline, or his rights as a class
5 member, prior to May 13, 2026. (Passman Decl. ¶ 7.) He received no individual notice
6 addressed to him by name before the February 9, 2026 deadline closed. (*Id.* at ¶¶ 4-5.)

7 On April 17, 2026, more than two months after the opt-out deadline had closed,
8 Passman reached out on his own initiative to his editor at Simon & Schuster, Stephanie
9 Frerich, to ask whether she knew anything about the Anthropic settlement. At the time,
10 he had received nothing. His own words confirm the absence of any prior notice: “I
11 wouldn’t be surprised if my book was involved, but I haven’t heard from anyone.”
12 (Passman Decl. ¶ 7; Ex. A.) On April 20, 2026, his editor responded that Simon &
13 Schuster’s legal team had advised that “the publishers could not register authors for
14 inclusion in the settlement” and that authors “needed to do so independently.” (*Id.* at ¶ 8.)
15 Simon & Schuster neither forwarded the original class notice nor took any step to inform
16 Passman of his rights as a class member. (*Id.*) That Passman was sufficiently engaged to
17 make his own inquiry does not impute to him knowledge of the opt-out deadline, the
18 existence of the claims process, or the right to seek court relief, none of which he had
19 ever been told by Class Counsel or anyone else involved in this matter.

20 **2. The Only Communication Passman Received from the**
21 **Settlement Administrator Was a Post-Deadline Claims Notice**
22 **That Said Nothing About His Right to Opt Out.**

23 On April 29, 2026, the settlement administrator, JND Legal Administration,
24 mailed a letter to Passman at 132 S RODEO DR, BEVERLY HILLS, CA 90212-2415.
25 (Passman Decl. ¶ 13; Ex. B.) The letter was received on May 13, 2026, ninety-three days
26 after the February 9 opt-out deadline. The final approval hearing was held the very next
27 day.

28 This letter was not the Court-approved class notice required by Rule 23(c)(2)(B).
It did not advise Passman of his right to opt out. It did not reference the February 9, 2026

1 opt-out deadline, which had already passed before the letter was sent. It did not advise
2 him of his right to seek court relief. Instead, the letter informed Passman that “claim(s)”
3 had been filed for his books by a third party, and invited him to file his own claim for
4 payment. Its sole operative deadline (70 days from April 29, 2026) was for filing a claims
5 form for payment, not for opting out. (Passman Decl. ¶ 13; Ex. B.)

6 The letter further stated that Passman “**may have** already received the Court-
7 approved Class Notice,” (emphasis added) affirmatively representing that a separate
8 original notice had been sent to him. (Passman Decl. ¶ 14.) Passman never received that
9 notice. (*Id.*)

10 **3. Passman Was an Identifiable Class Member Who Received No**
11 **Individual Notice.**

12 Passman was an identifiable class member; his authorship of four registered
13 editions of *All You Need to Know About the Music Business* is a matter of unambiguous
14 public record: on every cover and title page, in every retail listing and library catalog, and
15 in the Copyright Office records from which the Works List was compiled. The settlement
16 administrator compiled the Works List from Copyright Office records and Anthropic’s
17 own metadata and specifically identified Passman’s four registered editions. He was not a
18 difficult person to find. Yet no original class notice ever reached him before the February
19 9, 2026 opt-out deadline. (Passman Decl. ¶ 5.) There is no delivery confirmation, no
20 return receipt, and no record of actual receipt. Whether or not a notice was mailed, it
21 never arrived. (*Id.*) The notice program’s failures with respect to Passman, including its
22 inability to distinguish between two individuals sharing the same name, demonstrate that
23 notice was not reasonably calculated, under the particular circumstances applicable to
24 him, to ensure he was apprised of the proceedings. *See Mullane*, 339 U.S. at 314; *see also*
25 *Eisen*, 417 U.S. at 176. That is a failure of the notice program as applied to Passman,
26 regardless of how adequate the program may have been for other class members.

27 **4. The Settlement Administrator Erroneously Attributed a Third**
28 **Party’s Work to Passman, Confirming the Unreliability of Its**
Notice Processes.

1 The April 29, 2026 claims letter included, alongside Passman’s four registered
2 editions, a fifth work: *The Algebraic Structure of Group Rings*, Copyright Registration
3 No. RE0000923970. (Passman Decl. ¶ 15; Ex. B.) Passman is not the author of this book.
4 (Passman Decl. ¶ 15.) *The Algebraic Structure of Group Rings* was written by a
5 mathematics professor at the University of Wisconsin, a different person who shares
6 Passman’s name. The administrator conflated two different individuals because they
7 share a name. An administrator that cannot reliably distinguish between two individuals
8 is an administrator whose class identification and notice processes cannot be presumed
9 accurate or complete. This error supports Passman’s contention that the notice program
10 failed to adequately reach him.

11 **C. Passman Satisfies The Good Cause Or Excusable Neglect Standard
Under *Silber*.**

12 Each of the *Silber* factors favors granting this motion.

13 **Best practicable notice compliance.** This factor favors Passman. Due process
14 requires notice “reasonably calculated, under all the circumstances, to apprise interested
15 parties of the pendency . . . of the action.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339
16 U.S. 306, 314 (1950). For identifiable class members, individual notice is the
17 constitutional floor; mailing to an address at which notice is not received does not satisfy
18 it. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175–76 (1974). The relevant question
19 is not whether the administrator sent a notice but whether it reached Passman. It did not.
20 No original class notice ever arrived before the February 9, 2026 opt-out deadline, or at
21 any time thereafter. (Passman Decl. ¶ 4.) There is no delivery confirmation, no return
22 receipt, and no record of actual receipt. Passman’s sworn declaration that he never
23 received the notice is uncontroverted. Even if Class Counsel can show a notice was sent
24 and did not bounce back, non-delivery proof is not proof of actual receipt, and an
25 uncontroverted declaration of non-receipt is sufficient to establish the notice program’s
26 failure as to this class member. *See Eisen*, 417 U.S. at 176. That failure satisfies the first
27 *Silber* factor.
28

1 **When notice was actually received, and why not timely.** Passman received no
2 communication from the settlement administrator before February 9, 2026. (Passman
3 Decl. ¶ 4.) The first and only communication he received, the April 29, 2026 claims
4 notice, received May 13, 2026, arrived ninety-three days after the opt-out deadline. It was
5 not the original class notice, did not mention opt-out rights, and arrived after the final
6 approval motion had been filed and the day before the final approval hearing. (*Id.*) The
7 delay was entirely the product of the notice program’s failure to reach Passman, a failure
8 entirely outside his control.

9 **What caused the delay, and whose responsibility.** Passman did not cause the
10 failure of the notice program to reach him. He did not fail to monitor a settlement
11 website. The responsibility for the delay lies entirely with the notice program’s failure to
12 send him the original class notice.

13 **Upon receiving the April 29, 2026 claims notice on May 13, 2026, Passman**
14 **did not understand that he retained the right to seek exclusion from the settlement.**
15 The claims notice described a claims-filing process, said nothing about opt-out rights, and
16 affirmatively represented that he “may have already received the Court-approved Class
17 Notice,” implying that a separate original notice had been sent to him. (Passman Decl. ¶
18 14.) The letter set a single operative deadline, 70 days from April 29, for filing a claim
19 for payment, not for opting out. (*Id.*) An entertainment attorney who does not practice
20 federal class action litigation, receiving a post-deadline administrative letter that
21 mentions a prior original notice and sets only a claims-filing deadline, would not
22 reasonably understand that letter to be advising him that he retained the ability to seek
23 court relief from an opt-out deadline he had never been told about. (Passman Decl. ¶¶ 16–
24 17.) Recognizing that he needed specialized litigation counsel to advise him in a complex
25 class action, Passman contacted Freundlich Law on May 28, 2026. (*Id.* at ¶ 17.)
26 Freundlich Law conducted its intake, conflicts review, and assessment of the matter. The
27 engagement was formally finalized on June 24, 2026. This motion is filed a few days
28 later. The period between receipt of the claims notice and filing reflects the time

1 reasonably required for a non-litigating attorney to identify appropriate litigation counsel,
2 for counsel to evaluate a novel and complex matter, and for the parties to complete their
3 engagement. During that entire period, Passman had not been advised that he had opt-out
4 rights to exercise, and the claims letter he received disclosed no such rights. Once counsel
5 confirmed those rights existed and could still be sought from the Court, both Passman
6 and Freundlich Law acted without delay. (*Id.* at ¶ 18.)

7 **How many class members seek relief.** One. Passman is the only class member
8 filing a motion of this kind at this time. Granting his motion does not open a floodgate.
9 As the Second Supplemental Proposed Order itself demonstrates, the court has
10 considered late opt-outs on an individualized basis and is being asked to grant them
11 where good cause is shown.

12 **Effect on settlement and finality.** None of any substance. The settlement fund is
13 non-reversionary and fixed at \$1.5 billion. Removing Passman’s four works from the
14 class does not alter the fund, the distribution plan, or any other class member’s recovery
15 in any material respect. The four works represent a negligible fraction of the 482,460
16 works on the Works List. (Dkt. 672-1 at 5.)

17 **D. Passman’s Application Is Consistent With Class Counsel’s Own**
18 **Proposed Order.**

19 The Second Supplemental Proposed Order, filed by Class Counsel on May 21,
20 2026, grants the late opt-out requests of Esquivel and Castells because they
21 “demonstrated good cause.” Dkt. 672-1 at 48. The factual predicate for that grant is
22 directly applicable to Passman. Esquivel did not timely receive the original class notice,
23 as it arrived twenty-two days after the deadline. Castells never received the original class
24 notice, as he learned of the settlement from his aunt, three days after the deadline, and
25 filed his opt-out request seven days late. Both are granted on good cause grounds.
26 Passman’s case is structurally identical: he never received the original class notice, the
27 only communication he received from the administrator came ninety-three days after the
28 deadline and said nothing about opt-out rights, and he acted upon learning of his rights.

1 Passman's case is additionally stronger than Esquivel's and Castells's in one
2 important respect: he is the sole author and sole copyright owner of his four registered
3 editions. There is no co-owner issue of any kind. The only complication that initially
4 prevented Esquivel's and Castells's opt-outs from being granted, co-owner consent, does
5 not exist here. Class Counsel withdrew its opposition to Esquivel and Castells once that
6 issue was resolved. Passman respectfully requests that Class Counsel extend the same
7 treatment to his application.

8 The Second Supplemental Proposed Order further notes that there are seven other
9 individuals with late but otherwise valid opt-out requests, and denies them solely because
10 they "have [not] applied to the Court to request relief from the opt-out deadline." Dkt.
11 672-1 at 49–50. Passman is applying. He is doing precisely what those seven failed to do,
12 and precisely what Esquivel and Castells did when they were granted relief.

13 Class Counsel's position at the May 14, 2026 final approval hearing is also
14 relevant here. When this Court asked Mr. Nelson about the remaining late opt-outs, he
15 stated: "We will stand down on the objection if it's easier and so we will withdraw those
16 objections with respect to any of the late opt-outs that have come in, Your Honor." Hr'g
17 Tr. at 27:5–9. At minimum, that representation reflects Class Counsel's willingness to
18 withdraw opposition to late opt-outs as a category, and Passman files this motion in
19 reliance on that representation. (*Id.*) The Court may appropriately consider that statement
20 in evaluating whether any opposition to this motion is consistent with the position Class
21 Counsel took before the Court.

22 Only Anthropic opposes the late opt-outs of Esquivel and Castells, and that
23 opposition is being overruled in Class Counsel's own proposed order. Dkt. 671; Dkt. 672-
24 1 at 48. Anthropic's arguments against late opt-outs in its supplemental brief (Dkt. 671),
25 including that Esquivel and Castells waived any notice challenge by not contesting the
26 adequacy of the overall notice program, do not apply to Passman. Passman *does*
27 challenge the adequacy of notice as applied to him specifically. He received no original
28

1 class notice despite being an identifiable class member with a correct, known address.
 2 That is an independent due process argument. *See Mullane*, 339 U.S. at 314.

3 **E. No Party Will Be Prejudiced By Permitting Passman’s Exclusion.**

4 **The Class.** The \$1.5 billion settlement fund is non-reversionary and fixed.
 5 Passman’s four registered editions are four works out of the 482,460 on the Works List
 6 — well under one-thousandth of one percent of the class. (Dkt. 672-1 at 6.) Removing
 7 them does not reduce the fund or alter any other class member’s recovery. To the
 8 contrary, because the fund is fixed and non-reversionary, any amount that would have
 9 been allocated to Passman’s four works is redistributed among the remaining claimants,
 10 marginally increasing their recovery. Granting the exclusion thus takes nothing from the
 11 class; if anything, it leaves slightly more for everyone else.

12 **Class Counsel.** Class Counsel’s fee award of 12.5 percent of the common fund is
 13 unaffected by whether Passman participates. Dkt. 672-1 at 51.

14 **Defendant Anthropic.** Any exposure Anthropic may face from Passman’s
 15 individual claims is a consequence of its failure to adequately notify him through the
 16 settlement’s notice program. The settlement itself acknowledges the propriety of
 17 individual litigation by those with high-value claims: the proposed order states that an
 18 objector who contends “the amount should be higher” “had the right to opt-out its works
 19 and file suit.” Dkt. 672-1 at 24. Binding Passman to a settlement he never received notice
 20 of, in order to protect Anthropic from a claim Passman would have pursued had he timely
 21 received that notice, would be the very outcome due process is designed to prevent.

22 **F. Passman Has Substantial Individual Claims That The Settlement**
 23 **Does Not Adequately Address.**

24 *All You Need to Know About the Music Business* is the preeminent reference work
 25 on the music industry. It has been continuously in print for over three decades and is
 26 relied upon by recording artists, entertainment lawyers, artist managers, record label
 27 executives, and music business students worldwide. Four registered editions are
 28

1 separately identified on the Works List, each bearing an independent copyright
2 registration.

3 The estimated per-work payment from the settlement is approximately \$3,351.39
4 per claimed work at the current claims rate. (Dkt. 672-1 at 5.) For Passman's four
5 registered editions, total estimated settlement recovery is approximately \$13,400. Against
6 this, Passman's potential statutory damages under 17 U.S.C. § 504(c)(2) for willful
7 infringement are up to \$150,000 per registered work, or up to \$600,000 across four
8 editions, approximately 44 times the estimated per-work settlement payment. His
9 hypothetical license theory and lost sales theories present additional and potentially larger
10 damages. This disparity is not a reason to challenge the settlement's fairness for other
11 class members; it is a reason why Passman has a genuine, substantial, and good-faith
12 interest in pursuing individual litigation.

13 Passman's book is also particularly valuable as AI training data because of its
14 authoritative, comprehensive, and continuously updated treatment of complex music
15 industry topics. A reference work of this stature, continuously in print for over three
16 decades, relied upon by recording artists, entertainment lawyers, and music industry
17 executives worldwide, presents substantial hypothetical license, lost sales, and statutory
18 damages claims. The case for substantial individual damages is strong. Passman intends
19 to pursue them.

20 **G. In The Alternative, Passman Conditionally Objects To The**
21 **Settlement.**

22 Passman's request for exclusion is his primary relief, and he presses it
23 unconditionally. Only in the event the Court denies leave to opt out, and thereby holds
24 Passman a bound class member, does he object, in the alternative, to the proposed class
25 action settlement pursuant to Federal Rule of Civil Procedure 23(e)(5)(A) on the grounds
26 set forth below. This alternative objection is contingent on Passman remaining in the
27 class: it is asserted solely in his capacity as a class member and only if, and to the extent,
28 leave to opt out is denied. By asserting it, Passman does not waive, condition, or

1 withdraw his request for exclusion. If the Court grants exclusion, Passman is no longer a
2 class member and this objection is moot; it has force only if he remains bound. Passman
3 does not seek to delay or prevent the settlement's approval as to any other class member.

4 **1 Passman Cannot Constitutionally Be Bound by a Settlement in**
5 **a Case in Which He Received No Individual Notice.**

6 Here, Passman's four registered editions appear by name on the Works List,
7 reflecting his identity as the registered author in Copyright Office records. Yet no original
8 class notice was ever received by him before the opt-out deadline, or at any time
9 thereafter. (Passman Decl. ¶ 5.) The first and only communication he received from
10 anyone connected to this settlement was a post-deadline claims letter, dated April 29,
11 2026, received ninety-three days after the February 9 opt-out deadline. (*Id.* at ¶ 12.) On
12 these un rebutted facts, binding Passman to a settlement that extinguishes his individual
13 copyright claims would raise serious due process concerns that apply to him individually,
14 regardless of whether the notice program was adequate for any other class member.

15 **2. Class Members Could Not Make Fully Informed Opt-Out**
16 **Decisions Because the Critical Merits Ruling Was Withheld**
17 **From the Settlement Website Throughout the Opt-Out Period.**

18 At the May 14, 2026 final approval hearing, counsel for objectors established on
19 the record that this Court's summary judgment ruling on fair use, Dkt. 231, was entirely
20 absent from the settlement website throughout the seven-and-a-half-month opt-out
21 period. (Hr'g Tr. at 10–12 (May 14, 2026).) Class Counsel added it to the website only on
22 the weekend immediately before the final approval hearing. (*Id.*) The FJC Class Action
23 Notice Checklist, incorporated by reference in the proposed order, explicitly identifies the
24 court's substantive rulings as "key documents" that "will be available on a neutral
25 website." Dkt. 655-1 at 4.

26 The fair use ruling, Dkt. 231, is the most important document in this litigation: it
27 granted Anthropic summary judgment that using the works to train its LLMs was a fair
28 use, but held that Anthropic's downloading and retention of pirated copies to build a
central library was not a fair use, denied Anthropic summary judgment as to those pirated

1 library copies, and set them for trial on infringement and damages, including statutory
2 damages for willfulness. That ruling exposed Anthropic to substantial liability for the
3 pirated copies and drove the \$1.5 billion settlement. Due process requires notice
4 “reasonably calculated, under all the circumstances, to apprise interested parties of the
5 pendency of the action and afford them an opportunity to present their objections,” and
6 “when notice is a person’s due, process which is a mere gesture is not due process.”
7 *Mullane*, 339 U.S. at 314-315. In the Ninth Circuit, notice must “generally describe[] the
8 terms of the settlement in sufficient detail to alert those with adverse viewpoints to
9 investigate and to come forward and be heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361
10 F.3d 566, 575 (9th Cir. 2004). This objection does not ask that the notice analyze the
11 claims or estimate their value; the Ninth Circuit has held that Rule 23(e) requires neither.
12 *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015); *see also*
13 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948 (9th Cir. 2009). It rests instead on two facts
14 those cases do not reach. The notice program affirmatively represented, through the FJC
15 Class Action Notice Checklist incorporated into the proposed order, that the Court’s
16 substantive rulings would be available on a neutral website, Dkt. 655-1 at 4 — and Dkt.
17 231 resolves liability, not merely the value of recovery. Failing to upload the single
18 dispositive merits ruling for the entire seven-and-a-half-month opt-out period, then
19 posting it only on the weekend before final approval, made the program’s central promise
20 “a mere gesture” precisely as to the information most essential to a knowing and
21 intelligent decision: whether approximately \$3,351 per work fairly resolves an
22 infringement claim whose liability this Court had already sustained against Anthropic’s
23 fair use defense. *See Mullane*, 339 U.S. at 315. A class member cannot weigh that
24 question, cannot “choose for himself whether to appear or default, acquiesce or contest”
25 *Mullane*, 339 U.S. at 314, without access to the order establishing the claim. Passman,
26 who received no individual notice (see Section III.B) and had no access to the settlement
27 website, was doubly deprived of it.

1 **3. The Per-Work Settlement Payment Does Not Adequately**
2 **Compensate Registered Authors With High-Value Works**
3 **Under Rule 23(e)(2).**

4 Under Rule 23(e)(2)(C), the Court must consider whether the relief provided for
5 the class is adequate, including “the costs, risks, and delay of trial and appeal,” Rule
6 23(e)(2)(C)(i), and “the effectiveness of any proposed method of distributing relief to the
7 class,” Rule 23(e)(2)(C)(ii). The uniform per-work payment of approximately \$3,351
8 represents roughly two percent of the \$150,000 statutory damages ceiling for willful
9 copyright infringement per registered work. 17 U.S.C. § 504(c)(2). For a class member
10 like Passman, with four independently registered editions of a commercially significant
11 work, a work that has been in continuous print for over three decades, and claims that
12 survived summary judgment, the settlement allocation methodology does not comport
13 with Rule 23(e)(2)’s adequacy standard as applied to him individually. The proposed
14 order itself acknowledges that the appropriate response for class members who believe
15 the per-work payment is insufficient is to opt out and file individual suit. (Dkt. 672-1 at
16 24.) In the alternative, this Court should not approve a settlement that binds Passman to a
17 per-work payment two percent of his maximum statutory entitlement without having
18 afforded him the notice that would have allowed him to make that election.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Donald S. Passman respectfully requests that the Court
20 grant this motion and permit him to submit a late request for exclusion from the class
21 action settlement. (Passman Decl. ¶ 20.) The applicable standard, good cause or
22 excusable neglect under *Silber* and *Pioneer*, is satisfied on the same grounds that Class
23 Counsel’s own Second Supplemental Proposed Order accepts as sufficient for Esquivel
24 and Castells. Passman’s case is at least as compelling: he received no original class notice
25 through no fault of his own; he is a sole author with no co-owner issue; he acted promptly
26 upon understanding his rights; granting his exclusion causes no prejudice; and his
27 individual claims are substantial.
28

1 DATED: June 30, 2026

2
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